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IN THE

Supreme Court of the United States

October Term, 1964

No. 450

PAUL RHODES, *Petitioner,*

vs.

CLARENCE A. H. MEYER, ET AL., *Respondents.*

PAUL RHODES, *Petitioner,*

vs.

RICHARD M. VAN STEENBERG, ET AL., *Respondents.*

REPLY BRIEF OF PETITIONER TO RESPONDENTS' BRIEF IN OPPOSITION TO PETITION FOR CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

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QUESTIONS PRESENTED FOR REVIEW

1. It is noted that the petitioner raised four questions for review in his petition and that the respondents have raised four additional questions each of which would be sufficient for the granting of the writs of certiorari.

STATEMENT OF THE CASE

The respondents in their answer brief have completely ignored the fact that it is alleged in the complaint in *Rhodes v. Meyer* (R. 17580 Court of Appeals, *Rhodes v. Meyer*, p. 5 to 17 and specifically at p. 9) that the Judgment in *Rhodes v. Houston*, D. C. Neb., 202 F. Supp. 624, aff'd, 8 Cir., 309 F. 2d 959, cert. denied, 372 U. S. 909 was procured by fraud perpetrated upon the Court by the defendants, many of whom are respondents in the cases at bar.

That the respondents succeeded in the perpetration of the fraud upon the courts in *Rhodes v. Houston*, supra, at a time when they had this petitioner locked up and incommunicado without sufficient means to do anything about it. That since they were successful in the perpetration of their fraud they now contend that they should be allowed to take advantage of their fraud and that is what they are now asking this court to permit them to do.

The court is referred to (R. *Rhodes v. Meyer*, 17580 U. S. Court of Appeals, 8th Circuit, at pp. 14 & 15, in which their fraud is specifically alleged and their deceit on the court as to the Habeas Corpus proceeding, *Paul E. Rhodes v. W. W. Schultz, et al*, District Court of Cheyenne County, Nebraska being case No. 6617 and the complaint in the case at bar alleged the fraud of respondents as to the commitment as follows:

> "20. That the defendants in their brief to the Court in Case No. Civil 01322 United States District Court a then pending action with intent to perpetrate a fraud on this plaintiff and with intent to deceive the Court and the Honorable Judge thereof, Robert Van Pelt, and in collusion with all defendants, told the court that the Sheriff in Case of Paul E. Rhodes v. W. W. Schultz,

et al., District Court of Cheyenne County, Nebraska being case No. 6617 did not have a copy of the Commitment issued on November 23, 1960 by the clerk of the District Court of Morrill County, Nebraska, in case No. 4819, heretofore referred to as set out in his return and alleged to be delivered to the court with his return in said Habeas Corpus proceeding Case No. 6617 District Court of Cheyenne County, Nebraska, and in which the court discharged this plaintiff from the unlawful commitment and judgment of Case No. 4819 District Court of Morrill County, Nebraska, and when in truth and in fact the same was in the files in said case in Cheyenne County, Nebraska, and had been there since the Sheriff had delivered the return and the commitment copy to the Judge of said Cheyenne County Court on January 16, 1961.

"21. That the defendants later lied to the United States Court of Appeals in the same case appealed being case No. 16990 heretofore referred to and did so on page 64 of their brief and in oral argument, to-wit:

> " 'That this discharge was granted because the only document which the sheriff had in his possession as a basis for the arrest was a copy of the order of the District Court of Morrill County, and not the commitment issued by the Clerk of the Court (R10). This could in no manner constitute a bar to subsequent arrest.'

"22. That the commitment set out in paragraph 21 was served and the language of Sheriff on the back side reads, to-wit:

> " 'That a copy of said warrant of commitment is hereto attached and herein made a part of this return the same as if copied in full herein.'

"and that it was a part of the case file of case No. 6617 at all times after January 16, 1961.

"23. That the said defendant, Robert A. Nelson, with consent of all of the defendants to this action

on September 17, 1962, and in direct response to questions from Judges on the bench of the United States Court of Appeals and with intent to deceive the court and in collusion with all defendants to this action falsely represented to the Court that this plaintiff had not been forced to serve said sentence at Hard Labor, Infamous punishment, from January 23, 1961 to July 7, 1961."

That the judgment in *Rhodes v. Edmondson* T-3405 of April 15, 1964 shows on its face that it was rendered as a result of the issues duly tried, and reads as follows:

UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF KANSAS

PAUL E. RHODES,	)	
Plaintiff,	)	CIVIL ACTION FILE
vs.	)	NO. T-3405
HARRY W. EDMONDSON,	)	JUDGMENT
Defendant,	)	

This action came on for trial before the Court and a jury, Honorable Templar, United States District Judge presiding, and the issues having been fully tried and the jury having duly rendered its verdict.

It is Ordered and Adjudged that the plaintiff, Paul E. Rhodes, recover of the defendant, Harry W. Edmondson

1. The sum of $500.00, the statutory penalty provided for recommitment after discharge from habeas corpus;
2. the sum of $225,000.00, actual damages;
3. the sum of $225,000.00, punitive or exemplary damages;

with interest thereon at the rate of 6% as provided by law and his costs of action.

FILED
APR 15 1964
CHARLES W. CAHILL, Clerk
By Joe I Cooper /s/ Deputy

Filed and entered.

Dated at Topeka, Kansas, this 15th day of April, 1964.

CHARLES W. CAHILL
Clerk of Court
BY Joe I. Cooper /s/
Deputy

That the State's records showing the execution of Sentence of January 23, 1961 were concealed from the Court by the respondents in this action namely Clarence A. H. Meyer, and Robert A Nelson together with the other respondents, in *Rhodes v. Houston*, supra.

That when the United States District Court of Kansas entered sufficient orders to make them produce their records, the said Nelson and Meyer failed to appear and defend *Edmondson* as required by law. They could not face their own records, the records of the penitentiary, the State of Nebraska which showed that they had conspired to have the respondents Greenholtz and Sigler commit perjury, and defrauded the Court. That the State of Nebraska by the respondents had started the sentence to run on November 21, 1960 and had released the petition by First Release by expiration of sentence on July 5, 1961. They could not face their own records and their own perjury so they failed to defend Edmondson. The United States District Court of Kansas Court got the facts in *Rhodes v. Edmondson*, supra, among others the following letter, towit:

"June 22, 1961

Honorable Clarence A. H. Meyer
Attorney General
State Capitol Building
Lincoln 9, Nebraska

Re: Paul E. Rhodes #21675

Dear Mr. Meyer:

This in reference to our conversation of June 21 concerning the above-named inmate. Rhodes was sentenced on November 21, 1960, by the Morrill County District Court to serve a period of nine months in the Nebraska State Penitentiary for Contempt of Court. He was received at this institution on January 23, 1961, and upon admission was given forty-five days statutory time in accordance with Section 29-2632. Rhodes has not been assigned to work in the institution so therefore is not entitled to any extra-earned good time under Section 83-450.

Rhodes, at the present time, with his forty-five days statutory time, will be released from this institution on July 5, 1961 by the expiration of sentence.

Sincerely yours,

MAURICE H. SIGLER
WARDEN
By Raymond E. Sankey
Penal Records Officer

RES/cw"

A further sampling of the State's records that were considered by the Honorable Judge Templar, U. S. District Court of Kansas have been reproduced by cuts and are reprinted at Appendix G of this reply brief to exemplify the Fraud that was perpetrated upon the Courts in the case of *Rhodes v. Houston*, supra. Note individual's change of status exhibit in said appendix identified by Reporter David H. Brown as Exhibit #1 showing release from institution of this Petitioner on July 5, 1961, first release by expiration of sentence, clearly demonstrating the fraud perpetrated on the court in *Rhodes v. Houston*, supra.

The conflict between the Circuits is emphasized by a

recent case filed in the United States District Court of Nebraska being civil case No. 837L filed September 9, 1964 in which the respondent in this action, Clarence A. H. Meyer attempts to usurp the jurisdiction of the United States District Court of Kansas and have the United States District Court of Nebraska, a Court of co-ordinate jurisdiction overrule the United States District Court of Kansas exemplifying the conflict between the circuits and virtually making it war between the circuits, the Eighth Circuit and the Tenth Circuit. The complaint in said case is reprinted at appendix H herein, without the Exhibit A the copy of the Bond. The Clerk of this Court has been furnished a certified copy of said complaint in full.

ARGUMENT

I.

Matters deemed admitted; allegation of complaint must be taken as true on a motion to dismiss.

This mandate was clearly laid down by the United States Supreme Court in Federal Civil Rights cases in the case of *Cooper v. Pate,* —— U. S. ——, 84 S. Ct. 1733, —— L. Ed. 2d ——, June 1964. It is clearly noted that the respondents attempt to mislead the Court at pages 14 and 15 of their brief herein and absolutely fail to recognize or comment on the mandatory doctrine laid down by this Court in *Cooper v. Pate,* supra. That on considering the motion to dismiss in Federal Civil Rights Cases the allegations of the Complaint must be taken as true. This is mandatory by the opinion as cited at page 8 of petitioner's petition herein. Therefore, the fraud that was perpetrated upon the Court and alleged in petitioner's Complaint (R. 7 to 16 *Rhodes v. Meyer,* 17580 U. S. Court of Appeals Eighth Circuit), must be accepted as true. The Complaint in no place in-

corporates or makes a part thereof, by reference, or otherwise, the Court proceedings in any other case or any State Court proceeding. Therefore, by the mandate of this Court in the case *Cooper v. Pate,* supra, the District Court and the Court of Appeals were bound by the allegations on the face of the Complaint, and when they defeated these allegations on considering the Motion to Dismiss they deprived this petitioner of due process of law in violation of the Fifth Amendment of the United States Constitution. That the authorities cited by the respondents in their brief at pages 14 and 15 are wholly inapplicable for the reason that they are all prior to the Mandate of this Court in *Cooper v. Pate,* supra.

It is further noted that the respondents ask this Court to consider *Rhodes v. Houston,* supra, where they procurred the judgment by fraud but ask the court not to consider a case on the same issues, *Rhodes v. Edmonson,* T-3405 United States District Court of Kansas, where no fraud is claimed or alleged, and judgment was duly entered after the issues having been duly tried as to the matter of damages and the jury having duly rendered a verdict.

The respondents are attempting in this case to take advantage of their own fraud which is properly alleged, and specifically alleged, and that is exactly what the District Court and the Court of Appeals let them do and they are asking this Court to let them take advantage of their own fraud.

Their fraud was accomplished by the fact of defeating the allegations of the Complaint while considering the motion to dismiss with no opportunity for the petitioner to force the production of their own records to disclose the fraud; that such records were produced by orders of the United States District Court of Kansas a sampling of

which are reproduced from the records of the United States District Court of Kansas at Appendix H in this brief and on page 3 of the Statement in this brief.

That this court should not permit respondents to take advantage of their own fraud in *Rhodes v. Houston,* supra.

The lack of notice that made the Contempt Judgment void in the contempt proceeding was no Notice that the Motion for Continuance filed by defendant on November 21, 1960 had been overruled. This gave the accused therein and petitioner herein no opportunity to be present at trial on the merits on November 21, 1960 which proceeded forthwith. The Morrill County District Court therefore, divested itself of jurisdiction over the person of the accused, this petitioner, making the Order of Conviction of November 21, 1960 of the District Court of Morrill County, Nebraska VOID.

The Court of Appeals, 8th Circuit, erroneously found petitioner had had notice contrary to the allegations of the Complaints.

The opinion of the Court of Appeals of the 8th Circuit properly states the law but overlooks allegation of Complaint which must be admitted to be true on motion to dismiss.

In the 8th Circuit Court's opinion at page 28, Appendix A to petitioner's petition, the Court states:

> "In the determination of the immunity of Van Steenberg in Houston, Judge Van Pelt found from the plaintiff's complaint and a notice filed by plaintiff on November 2, 1960, that plaintiff had been present in earlier proceedings in the contempt trial. *Thus jurisdiction of the court fully attached both as to subject*

matter and as to person and such jurisdiction would continue until all issues were finally litigated as long as the accused was given due notice of his denial of continuance and an opportunity to be present and defend." (Emphasis supplied by this writer)

On page 631 of 202 F. Supp. 624, Judge Van Pelt refers to plaintiff's complaint which sets out the November 21, 1960 order of Judge Van Steenberg reciting that plaintiff had been "duly notified of this hearing * * *."

Properly applying this rule of law that has been emphasized by this writer in quoting the opinion of the Court of Appeals above, the District Court of Morrill County, Nebraska had no jurisdiction after denying the motion for continuance on November 21, 1960 and proceeding to trial forthwith, thereafter, without notice to the accused, this petitioner, to sentence the accused therein, this petitioner on November 21, 1960, and the judgment is absolutely void for the reason the District Court of Morrill County acted contrary to trial court's comment at 225 F. Supp. at p. 109, case at bar.

The pertinent part of the order of November 21, 1960, of the District Court of Morrill County, Nebraska, which was made a part of the Complaint in the *Houston* case, contained at page 35 of Record, reads as follows:

> "Now on this 21st day of November, 1960, one of the regular days of the September 1960 term of court this matter came on further to be heard upon the motion of the defendant for a continuance on the ground of his claim of physical illness and inability to attend trial. The State was represented by County Attorney, James L. Macken. The defendant was not present and was not represented by counsel although duly notified of this hearing. Evidence was adduced by the State tending to show considerable physical

> activity on the part of the defendant, wholly inconsistent with defendant's claim of physical inability to attend trial. The court being fully advised in the premises finds that the defendant's motion for continuance filed this date should be, and is hereby overruled. * * *
>
> "This matter came on further to be heard upon the merits, the State introduced additional evidence pursuant to the order of the court heretofore entered permitting the State to withdraw its rest, and the matter was submitted to the Court * * *."

This clearly shows that this petitioner, the accused therein, was given no notice after the motion for continuance was overruled and no opportunity to appear and defend. This made the judgment void pursuant to the opinion of the Court of Appeals at Appendix A, page 28 of petitioner's petition herein, to-wit:

> "The jurisdiction of the court attached both as to the subject matter and as to person and such jurisdiction would continue until all issues were finally litigated *as long as the accused was given due notice of his denial of continuance and an opportunity to be present and defend.*" (Emphasis supplied)

If the Court of Appeals, 8th Circuit, had properly applied this rule they would have found the District Court of Morrill County, Nebraska had no jurisdiction under the allegation of complaint to sentence accused therein, petitioner herein.

The Court of Appeals statement of the law is contrary to the trial court's statement of the law at 225 F. Supp. at p. 109, case at bar, but the Court of Appeals misapplied the law to the undisputed facts of the void judgment of conviction of November 21, 1960, as shown by the judgment itself.

II.

Res judicata and stare decisis have no application where judgment is procured by fraud.

This proposition is so clear that no citation of authority would be necessary. The respondents succeeded in *Rhodes v. Houston,* supra, in concealing their own records from the Court that they had forced this petitioner to serve said void sentence from January 23, 1961 through expiration of sentence July 5, 1961 through expiration of sentence, by imprisoning petitioner in the "Hole" of the Nebraska State Penitentiary and holding him incommunicado. They are now by the application of Res Judicata and Stare Decisis attempting to take advantage of their own fraud and that is exactly what the lower courts let them do and they are now asking this court to do the same. The defeating the allegations of the Complaint in *Rhodes v. Houston*, supra, on consideration of the Motion to Dismiss gave this respondent no opportunity to get or force production of their own records of the state of Nebraska disclosing the fraud that they had forced this petitioner to serve said sentence and that they did not hold this respondent as a "SAFE-KEEPER" this Court should not use the doctrine of res judicata and stare decisis to permit respondents to continue the perpetuation of their fraud.

III.

Sentencing the petitioner in absentia to "hard labor" and commitment thereto without the conviction of a crime states a claim upon which relief must be granted.

The respondents at page 17 of their brief in citing *Draper v. Rhay,* 9 Cir., 315 F. 2d 193 attempt to mislead this court by stating that this petitioner was under a misapprehension as to the nature of the *Draper* case. This petitioner

was under no misapprehension. He is fully aware that the *Draper* case was a Civil Rights Case but has stated in his petition the Court in that case was dealing with a convicted felon, a petitioner who had twice been convicted and serving two consecutive terms for the conviction of a felony, a criminal case being dealt with in a Federal Civil Rights case.

The *Draper* case has no application in the case at bar for the reason that Contempt of Court is not a crime in Nebraska and does not come within the exception of the Thirteenth Amendment of the United States Constitution as did the *Draper* case. The *Draper* case dealing with a Criminal Case, a criminal, a convicted felon.

IV.

State remedy need not be exhausted before invoking Federal jurisdiction under Civil Rights Act, 42 U. S. C. A. #1983.

This court clearly determined in the case of *Monroe v. Pape,* 365 U. S. 167, 81 S. Ct. 473, 5 L. Ed. 2d 492 that the state remedy must not be exhausted, if any, before invoking Federal remedy under the Civil Rights Act 42 U. S. C. A. #1983, and did so by making the following determination in the case, to-wit:

> Under statute making every person who, under color of any state statute, ordinance, regulation, etc., deprives any citizen of the United States of his constitutional rights liable to party injured, federal remedy is supplementary to the state, and state remedy, if any, need not first be sought and refused before federal one is invoked.

V.

Conflict between the circuits emphasized by recent cases.

It was recently determined in the Second Circuit in *Rickey v. Wilkins, Warden,* 335 F. 2d 1 (1964) 2 Cir. that a prisoner states a claim against a Warden under the Federal Civil Rights Act where he asks for a money judgment against the Warden for deprivation of a right secured to him by the United States Constitution.

In the recent case of *Roof v. Patacchia,* 232 F. Supp.71 (1964) (9 Cir.) that it is the violation of Civil Rights that is the basis of a claim regardless of how minor, and in that case the court said, to-wit:

> "It is now well established, at least in this circuit that the only elements which need to be present in order to establish a claim under this statute are (1) that the conduct engaged in by the defendants was under color of state law; and (2) that such conduct subjected the plaintiff to deprivation of rights, privileges and immunities secured by Constitution of United States. Marshal v. Sawyer, 301 F. 2d 639 (C. A. 9)."

The conflict between the Circuits is further emphasized by the actions of respondent Clarence A. H. Meyer, Attorney General of the State of Nebraska on September 9, 1964 in his attempt to usurp the jurisdiction of the United States District Court of Kansas, Tenth Circuit, *Rhodes v. Edmondson,* T-3405 U. S. District Court of Kansas by bringing an action in the United States District Court of Nebraska to usurp the Kansas Court's jurisdiction (See Appendix H this brief). That the purpose of said action by Meyer is to have the Nebraska Court, a court of coordinate jurisdiction, overrule the Kansas Court as to the law of the case. The Kansas Court being the Court that entered sufficient orders to make Clarence A. H. Meyer, respondent

produce the records of the State of Nebraska, which disclosed the fraud that Meyer had perpetrated upon the Court in the case of *Rhodes v. Houston*, supra, *Rhodes v. Meyer*, 225 F. Supp. 80, *Rhodes v. Van Steenberg*, 225 F. Supp. 113.

CONCLUSION

The respondents have perpetrated a fraud upon the United States District Court of Nebraska, and the Court of Appeals of the Eighth Circuit by its ruling, upholds this action. There is a conflict between the Circuits. The conflict exists on the same case and the same facts. The lower Courts are in confusion. The leading Supreme Court cases have been rejected or ignored below and have been ignored by the respondents, particularly *Cooper v. Pate*, supra. The Constitutional rights of the petitioner, not convicted of a crime, have been outrageously violated by respondents.

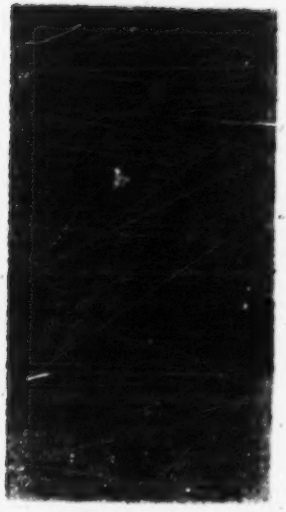
For the foregoing reasons, Writs of Certiorari should be granted.

Respectfully submitted,

PAUL RHODES
Appearing Pro Se

Box 47
Howe, Nebraska

APPENDIX G



J-252

No. 21675 Name RHODES, Paul E.

Received January 23, 1961

County Morrill

Crime Contempt of Court

Sentence Nine (9) Months

Sent. Begins November 21, 1960

Full Time 8-20-61 Good Time 7-5-61

Age 41 Nat'y White Rel. None Occup. Lawyer

Paroled

Transf.

Escaped

Record

Exhibit No. 77

David H. Brown, Reporter

No.	Name
21675	PAUL E. [redacted]

NEBRASKA PENITENTIARY

No. 21675

Name: Paul E. [redacted]

Received: January 27, 1961

County: Harrill

Crime: Contempt of Court

Term: April 1961

Sentence: Nine (9) months

Sentence Begins: November 27, 1960

Good Time: July 5, 1961

Full Time: August 27, 1961

Paroled

Discharged

Remarks

Discharged: July 6, 1961.

10

[redacted]

Date	Received From	Sentence Expires When	Time
		Amount	
		Amount	
		Amount	
		Amount	
		Amount	
		Amount	
	Discharge Date		
	Delinquent Date		

DETAINERS

Remarks

Rel. by Duane Jones, Deputy Attorney General, five days prior to release of inmate.

BC-2(DC), 4-1 — State of Nebraska, Board of Control

Quinquennial Report of Cases Admitted to Penal Institutions

1. Institution: State Penitentiary

2. Name (Last, First, Middle)	[redacted], Paul R.	3. Case Number	21675
4. Admission Date (Month, Day, Year)	January 21, 1941	5. Type of Adm.	X — Sentenced ___ Transfer ___ Bobtailer
6. Residence (County, State)	Dana, Nebraska	7. County of Commitment	Howard
8. Crime	Contempt of Court	9. Sentence	Nine(9) Months — Counts ___ CC CS
10. Birthdate (Month, Day, Year)	July 27, 1919 — Age 21	11. Sex	1-Male 2-Female

12. Race	1-White	2-Negro	3-Indian	4-Mexican	5-Other			
13. Education	0-Illiterate	1-Gr. 1-4	2-Gr. 5-6	3-Gr. 7-8	4-H.S. 1-3	5-H.S. 4	6-Coll. 1-3	7-Coll. 4+
14. Religious Preference	0-Not Any	1-Hebrew	2-Protestant	3-Catholic	4-Other			
15. Birthplace	Dana, Nebraska							
16. Time in State	0-Less Than 10 Days	1-(10-30 Days)	2-(1-5 Mo.)	3-(6-11 Mo.)	4-(1-3 Yrs.)	5-(4-6 Yrs)	6-(7-10 Yrs.)	7-11 Years Or Over
17. Occupation	0-Not Any	1-Com. Labor	2-Farm Labor	3-Farmer	4-Skilled Trade	5-Own Business	6-Professions	7-Housewife	8-Domestic	9-Clerk	A-Student	B-Prof. Criminal
18. Marital Status	0-Single	1-Married	2-Widowed	3-Divorced	4-Separated	5-Com. Law						
19. No. of Dependents	Adults 1	Children 3										
20. Military Record	0-None	1-Hon. Discharge	2-Other Specify)									
21. Use of Alcohol	0-Not Significant	1-Mod. With Low Tolerance	2-Alcoholic	3-Chronic Alcoholism								
22. Intelligence Question	0-(0-49)	1-(50-69)	2-(70-79)	3-(80-89)	4-(90-99)	5-(100-109)	6-(110-119)	7-(110-119)	8-(120-129)	9-(130-Up)		
23. Severe Physical Disability	0-None	01-Orthopedic	02-Cardiac	03-Pulmonary	04-Neurological	05-Venereal	06-Other (See Comb. Codes)					
24. Work Adjustment	1-Highly Dependable	2-Adequate	3-Unstable	4-Undetermined								
25. Parental Marriage Parental Home Broken	1-Harmonious	2-Discordant	3-Serious Friction	4-Little Or No Cohesion								
	0-No	1-Before Age 3	2-Before Age 6	3-Before Age 9	4-Before Age 12	5-Before Age 16	6-After Age 16					
26. Age At First Attn. Of Authorities	1-Under 10	2-(10-12)	3-(13-14)	4-(15-16)	5-(17-18)	6-(19-20)	7-(21-Up)					

PREVIOUS CORRECTIONAL INSTITUTION TERMS

27. Training Schools	0-None	1-Nebraska	2-Federal	3-Other State	
28. No. Of Jail Terms	Nebraska	Other			
29. No. Prison Terms	Nebraska	Other State Or Federal			
30. Total Time Sentenced	0-None	1-Less Than 1 Yr.	2-(1-3 Yrs.)	3-(3-5 Yrs)	4-(5-10 Yrs.)	5-(Over 10 Yrs.)
31. Time Since Last Release	0-Never Incarcerated	1-Less Than 10 Days	2-(10-30 Days)	3-(1-5 Mos.)	4-(6-11 Mos.)	5-(1 Year)	6-(2-4 Yrs)	7-(4 Years Or Over)

BC(SDCI) 350 (Rev. 7-76) State of Nebraska
Board of Control

Individual Change of Status
Penal Institutions

Institution [redacted] Case Number [redacted]

Name [redacted] Last [redacted] First [redacted] Middle Date of Change [redacted] Month [redacted] Day [redacted] Year

Date of Birth [redacted] Month [redacted] Day [redacted] Year Age [redacted]

---

01 Authorized temporary leave
02 Escape
03 Safekeeper out
04 Permanent transfer out
10 Discharged from parole
11 Return from leave
12 Return from escape
13 Return from parole
30 Died in institution
31 Executed

RELEASED FROM INSTITUTION — X First release — Parole violator

X 40 Expiration of sentence — 41 Conditional release (Parole) — 42 Pardon

43 Commutation — 44 Court order

COMPLETE THE FOLLOWING FOR RELEASES — Items 40 through 44

Offense [redacted] County CC [redacted]

Sentence:

Indeterminate Min. [redacted] Yrs. [redacted] Mos. Max. [redacted] Yrs. [redacted] Mos. Definite [redacted] Years [redacted] Months [redacted] Days

Time served [redacted] Years [redacted] Months [redacted] Days

Failed to Send Out Bryan Bridge

INSTITUTION COPY

APPENDIX H

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE DISTRICT OF NEBRASKA

STATE OF NEBRASKA, EX REL CLARENCE A. H. MEYER, ATTORNEY GENERAL and LUMBERMENS MUTUAL CASUALTY COMPANY, A Corporation, Plaintiffs, vs. PAUL E. RHODES, Defendant.	)	CIVIL NO. 837L COMPLAINT

Plaintiffs complain of defendant and represent:

1. Jurisdiction of this Court is invoked under 28 U. S. C. A. 1651 and 28 U. S. C. A. 2201 and by virtue of the fact that this proceeding is ancillary to Case No. 01322, Paul E. Rhodes vs. Norval Houston, et al., Civil No. 01682, Paul Rhodes vs. Clarence A. H. Meyer, and Civil No. 01784, Paul Rhodes vs. Richard Van Steenberg, et al., which cases heretofore have been determined by this Court, and is brought for the purpose of protecting litigants from purely vexatious suits, protecting the Court from unwarranted impositions upon its jurisdiction, and making effective its judgments.

2. Plaintiff, State of Nebraska, is one of the sovereign states of the United States of America and Clarence A. H. Meyer is its duly elected, qualified and acting Attorney General. Said plaintiff brings this action to protect its officers, employees, and members of the public by preventing wrongs arising out of repeated, continuous, and wrongful prosecution, and threatened prosecution, of ac-

tions by the defendant which are contrary to public policy and result in injury to the State and its citizens.

3. Plaintiff, Lumbermens Mutual Casualty Company, is a corporation organized and existing under the laws of the State of Illinois, with its principal place of business in the State of Illinois; said plaintiff is surety on the bonds of numerous State officers and employees; said plaintiff has been made a direct defendant in certain of said actions and is threatened by the defendant with additional similar actions. A copy of said bond is attached hereto, made a part hereof, and marked Exhibit A. The defendant contends and threatens to contend that said surety is liable to him directly, whereas Lumbermens Mutual Casualty Company contends and hereby alleges that under the terms of said bond in relation to the acts and omissions alleged and threatened to be alleged by the defendant against such State officers and employees, said surety has no liability to the defendant.

4. The defendant, Paul E. Rhodes, has filed in this Court, actions, of which each is based upon the same allegations of fact, respecting the defendant's confinement in the Nebraska State Penitentiary and court proceedings connected with such confinement, and in each of which it was determined that as a matter of law the facts were such that relief could not be granted to Paul E. Rhodes, such actions being:

Title of Case	*Date Filed*	*Date of Judgment*
Paul E. Rhodes vs. Norval Houston et al, Civil No. 01322 (202 Fed. Supp. 624, Aff'd,	9-21-61	1-29-62

8 Cir., 309 Fed. 2d 959, Cert denied, 372 U. S. 909)		
Paul Rhodes vs. Clarence A. H. Meyer, et al, Civil No. 01682 (225 Fed. Supp. 80, Aff'd Aug 5, 1964, —— Fed. 2d ——, Application for Cert. pending)	3-8-63	12-3-63
Paul Rhodes vs. Richard M. Van Steenberg, et al, Civil No. 01784 (225 Fed. Supp. 113, Aff'd Aug. 5, 1964, —— Fed. 2d ——, Application for Cert. pending)	7-26-63	12-16-63

5. Defendant also has filed, based upon the same allegations of fact, four other actions, namely: Paul E. Rhodes v. Harry W. Edmondson, United States District Court for the District of Kansas, Civil No. T-3405, in which a purported judgment in favor of Paul E. Rhodes was entered April 15, 1964; Paul Rhodes v. Lumbermen's Mutual Casualty Company, United States District Court for the District of Kansas, Civil No. T-3594, which is pending; Paul Rhodes v. Dwain L. Jones, United States District Court for the District of Minnesota, Third Division, Civil No. 3-64-215, which is pending; and Paul E. Rhodes v. Harry W. Edmondson, District Court of Nemaha County, Nebraska, No. 8096-R-157, which is pending.

6. Defendant also has filed numerous actions in the courts of the State of Nebraska arising out of the same allegations of fact, which actions have terminated in final judgments adverse to Paul E. Rhodes.

7. Defendant in the past has harrassed and now is con-

tinuing to harass numerous State employees and former employees, and other citizens of the State of Nebraska, and Lumbermen's Mutual Casualty Company by contacting them by telephone, letter and personal contact, demanding payment of money because of his said confinement in the Nebraska State Penitentiary and court proceedings connected with such confinement, in the past has attempted and is continuing to attempt to intimidate said persons, and in the past has threatened and is continuing to threaten that unless such payment is made, legal action will be brought against them.

8. All issues of fact and law which are raised in the pending and threatened actions, were, or could have been raised by the defendant, Paul E. Rhodes, in the three actions brought in this Court and herein referred to.

9. The judgment abtained by the defendant, Paul E. Rhodes in the action brought in the United States District Court for the District of Kansas, against Harry W. Edmondson, Civil No. T-3405, was a default judgment and was obtained as the result of fraud and collusion on the part of the defendant and said Harry W. Edmondson.

10. The actions brought by the defendant, Paul E. Rhodes, now pending, and those threatened to be brought, are repetitious, vexatious, baseless, and an abuse of process, and are designed to harass the plaintiffs and those whom they represent, to circumvent the judgments of this court, and the courts of the State of Nebraska, and to evade the laws of the State of Nebraska.

11. As a direct result of the commencement and prosecution of said actions, the plaintiffs have incurred and will continue to incur considerable expense and harassment and unless the described conduct of the defendant is pre-

vented by injuction, plaintiff will suffer substantial and irreparable injury. Plaintiffs have no adequate remedy at law. The pecuniary value of the rights of the Lumbermens Mutual Casualty Company which it seeks to protect by this action exceed $10,000 exclusive of interest, if any, and costs in this action.

WHEREFORE, the plaintiffs jointly and severally pray:

a. That with respect to any claimed liability for damages arising from the defendant's confinement in the Nebraska State Penitentiary or from court proceedings connected with such confinement, the defendant be enjoined:

(1) from filing in any court, without permission from this Court, any action claiming such liability or seeking such damages;

(2) from maintaining any of the actions described in paragraph numbered 5 of this complaint;

(3) from maintaining any such action which may be filed prior to the order of this Court but not described by said paragraph numbered 5;

(4) from harassing, contacting, demanding money from, attempting to intimidate, or threatening actions against any of the following: Officers, employees, or attorneys of the State of Nebraska, former employees of the State of Nebraska, members and former members of the Nebraska State Bar Association, citizens of the State of Nebraska, Lumbermens Mutual Casualty Company, employees or attorneys of the Lumbermens Mutual Casualty Company.

b. That the purported judgment entered April 15, 1964,

in said action Civil No. T-3405 United States District Court for the District of Kansas, against Harry W. Edmondson in favor of Paul E. Rhodes, be declared a nullity and unenforceable against either of the plaintiffs in this action;

c. That the plaintiffs recover their costs of action;

d. That the plaintiffs have such other, further and different relief as in equity and good conscience they may be entitled to.

The plaintiff Lumbermens Mutual Casualty Company, separately, further prays for judgment declaring that under the terms of its bond it has no liability to Paul E. Rhodes.

STATE OF NEBRASKA EX REL, CLARENCE A. H. MEYER, ATTORNEY GENERAL

By Robert A. Nelson /s/

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LUMBERMENS MUTUAL CASUALTY COMPANY, A Corporation, Plaintiff.

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1200 Sharp Building
Lincoln, Nebraska, 68508
Telephone: 432-1271
Its Attorneys.

By John R. Baylor /s/

A Member of the Firm

Request For Place of Trial

Plaintiff hereby requests trial at Lincoln, Nebraska

Robert A. Nelson /s/

One of Attorneys for Plaintiffs.

FILED DISTRICT OF NEBRASKA SEP - 9 1964

By Richard P. Peck